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HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION (C) No. 1277 of 2007.

PETITIONER : Smt. Digeshwari Dewangan w/o Shri Aivez Dewangan aged about 30 years, R/o Trimurtinagar Ward No. 5, Birga on, councilor Dr. Khoobchand Baghel ward No. 5 Muncipal Council, Birgaon Tehsil and District Raipur (C.G.)

VERSUS

RESPONDENTS :

1. State of Chhattisgarh, through Chief Municipal Officer, Nagar Palika Parishad, Birgaon, Tehsil Dharsiva, District Raipur (C.G.).
2. Collector, Raipur District Raipur (C.G.)
3. Om Prakash Dewangan S/o Shri Kanhaiya Lal Dewangan, aged about 37 years, President Nagar Palika Parishad, Birgaon, District Raipur (C.G.)

Present: Shri Manish Upadhyay, Advocate for the petitioner.
Shri Utkarsh Verma, Deputy Government Advocate for the State/respondents 1 and 2.
Shri Prateek Sharma, Advocate for respondent no.3.

ORDER
(Passed on 12th of March, 2007)

1. The petitioner challenges the legality and validity of order dated 22.01.2007 (Annexure P/5) passed by the Collector, Raipur in Panchayat Case No. 26/B-121/Year 2005-06 whereunder the

petitioner has been declared as disqualified under provisions of Section 38(1)(c)of The Chhattisgarh Municipalities Act, 1961, (hereinafter referred to as "Act, 1961") from the office of Councilor of Ward No. 5.

2. The indisputable facts in nutshell are that the petitioner was elected as Councilor from ward no. 5 of Municipal Council, Birgaon, District Raipur as an independent candidate in the election held in December 2004. It was brought to the notice of the Collector vide report dated 9.3.2006 that the petitioner as Councilor did not attend the council meeting from 31.3.2005 to 10.11.2005 without leave of the Council. Thus, abstention during six consecutive months from the meetings of the council entails disqualification under provisions of section 38 of Act, 1961. Pursuant to that, show cause notice dated 26.4.2006 was issued to the petitioner. The petitioner submitted her reply on 25.09.2006 (Annexure P/3). The Collector, after having afforded proper opportunity of hearing to the petitioner, the Chief Municipal Officer and after having examined the minutes of the proceedings dated 31.3.2005, 25.7.2005, 6.8.2005 and 18.11.2005 passed the impugned order. The petitioner has not alleged any malafide to the effect that the petitioner had participated but her name was not recorded in the proceedings in her reply deliberately. After hearing the petitioner and after examining the Registers of the proceedings, the Collector came to the conclusion that it has been found proved that the petitioner absented herself during six consecutive months

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from the meetings of the Council without leave of the Council as stated above. Accordingly, while exercising his power under section 38(1)(c) of the Act, 1961, the petitioner was declared as disqualified w.e.f the date of the order.

3. The learned counsel appearing for the petitioner submits that the petitioner has obtained documents at Annexure P/1 under the provisions of Right to Information Act. It was further contended that the proceedings as obtained did not bear signature of the competent authority i.e. the Chief Municipal Officer. It appears that the petitioner has been supplied with only one page of the proceeding not the entire copy of the proceedings.

4. Shri Prateek Sharma, learned counsel appearing for respondent no. 3 submits that there is no reason not to record the appearance of the petitioner in the proceedings and it is also not the case of the petitioner that the petitioner's name has not been recorded deliberately in the proceedings. Learned counsel further submits that all the proceedings duly authenticated by the Chief Municipal Officer have been produced before the Collector and the Collector has passed the order after examining the documents.

5. Shri Utkarsh Verma, Deputy Government Advocate for the respondent no. 1 and 2 adopts the submission made by the learned counsel appearing for respondent no. 3 and further submits that in order to invoke jurisdiction u/s. 38 of the Act 1961, proof of absence

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for six consecutive months is enough. No further explanation is required for declaration.

6. I have heard learned counsel for the parties and perused the pleadings and documents appended thereto. It appears that the impugned order was passed after examining all the facts and circumstances of the case. The Collector has gone through the proceedings and has heard the petitioner before passing the order. I do not find any infirmity, illegality or jurisdictional error in the impugned order. Thus, it does not call for any interference by this Court.

7. This petition is accordingly dismissed. No order as to costs.

8. Consequently, M(W)P No. 826/2007, application for interim relief, stands disposed of.

Sd/-
Satish K. Agnihotri
Judge

Amit